

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2142 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements? Yes.
2. To be referred to the Reporter or not? Yes. :
3. Whether Their Lordships wish to see the fair copy :
of the judgement? No.
4. Whether this case involves a substantial question :
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? No.
5. Whether it is to be circulated to the Civil Judge?
No.

MAHEBUBBHAI I VORA

Versus

NIMA PRIVATE LIMITED

Appearance:

MR MUKESH H RATHOD for Petitioners

MR PS CHARI for Respondent No. 1

CORAM : MR.JUSTICE J.N.BHATT

Date of decision: 19/11/1999

ORAL JUDGEMENT

By this petition, under article 227 of the Constitution of India, the petitioners, who are the original workmen, have challenged the award recorded by the Labour Court, at Vadodara, in Reference (LCB) No.1470/77, passed on 1st June, 1983, whereby, order of the punishment of the dismissal imposed in departmental

inquiry by the respondent-employer-company, upon a proof of delinquency with regard to indulging in a go-blow tactics in discharge of employment duties, came to be quashed ,but, without awarding back-wages. Therefore, precisely, the question which would emerge for determination and adjudication in this petition would be limited in a small circumference as to whether proportionality of imposition of penalty, in not awarding back wages while exercising the discrionery powers, under section 11-A of the Industrial Disputes Act, 1947, is not commensurate with delinquency established against the employees ? In other words, question requiring determination would be as to whether refusal of order withholding of backwages while passing order of reinstatement of the petitioners-employees could be said to be schokingly disproportionate to the delinquency established against employees. The answer to this question recorded by the Labour Court is evident from the enumeration of the facts in the impugned award. Nothing has been successful point out which would warrant departure or calling for interference of this Court,in the exercise of the discretionery powers of the Labour Court, under section 11-A, in terms of the delinquency established. More so in view of the following unquestionable aspect emerging from the records of the present case.

(1) The indulgence in go-slow tactics can not be said to be a lesser misconduct. On the contrary, as pointed out by the learned advocate on behalf of the respondent-company by relying upon the decision of the Hon'ble Apex Court, in case of Bharat Sugar Mills vs Its Employees, reported in 1961(II) LLJ 644 ,wherein it is held as under:-

"..... Go-slow" which a picturasque description of deliberate delaying of production of workman pretending to be engaged in the factory is one of the most parnicious practice that discontanted or disgruntled workman sometimes resort to. It would not be far wrong to call this dishonest. For while thus delaying production and claim to have remained employed and thus to be entitled to full wages. Apart from this also, go-slow is likely to be much more harmful than total cessation of work by strike. For, while during a strike such of the machinery can be fully turned off,during the "go-slow" the machinery is

kept going on reduced speed which is often extremely damaging to the machinery parts. For all these reasons, "go-slow" has always been considered a serious type of misconduct".

Reliance is also placed on the decision of the Hon'ble Apex Court in case of New Shorrock Mills vs Meshbhai R.Rao, reported in AIR 1997(SC)252, wherein the award of the Labour Court granting reinstatement to the employees with 40% backwages, was quashed and set aside.

(2) Incidence of late filing of the petition without enumeration or satisfactory elaboration of the grounds for being late, as the award of the Labour Court, was recorded as early as on 1st June, 1983, where the petition came to be filed on 19th February, 1986, coupled with the facts that in a petition, at the instance of the employer, this Court, in Special Civil Application No.228 of 1984, while dismissing the petition on 28th April, 1984, has incidently also observed that the Labour Court was not in error in matter of principle or authority to hold on the facts and circumstances that the punishment was excessive.

(3) The respondent-employer-company is not on going concern, which is as such closed since 12th July, 1986 and the employees including the petitioners have been paid their legal dues at the stage of the closure.

(4) The jurisdictional sweep of a Court, while entertaining the petition under section 227 of the Constitution of India, which empowers the Court with powers of the superintendence of the Court, including the authority of the Tribunal. There is no question of jurisdictional error. Again exercise of the discretionary powers of the Lower Court, under section 11-A of the Industrial Disputes Act, in the peculiar facts, and special circumstances and the allegations of indulgence and go-slow tactics of the leaders of the Union, could not be shown or has not been set out in any way tainted with information calling for interference of the exercise of superintendence powers of this Court, under Art.227 of the Constitution of India. In the result, the petition deserves to be rejected accordingly.

The petition shall stand rejected, without any order cost.

(J.N.BHATT, J)

Patil